

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDERICK W. FISHER, JR., : Civil No. 4: 04-1945

 Plaintiff : (Judge McClure)

 v. : (Magistrate Judge Smyser)

JANAN LOOMIS, et al, :

 Defendants :

O R D E R

July 15, 2005

BACKGROUND:

On September 1, 2004, plaintiff, a prisoner proceeding pro se, commenced this 42 U.S.C. § 1983 action by filing a complaint. On December 15, 2004, the plaintiff filed an amended complaint. On March 25, 2005, the court ordered the Clerk of the Court to serve the plaintiff's amended complaint on the defendants and the defendants were requested to waive service. In a series of filings, on April 28, 2005 (Rec. Doc. No. 26), May 15, 2005 (Rec. Doc. No. 29), and June 6, 2005 (Rec Doc. No. 34), plaintiff moved the court for default and entry of default judgment.

On July 1, 2005, United States Magistrate Judge J. Andrew Smyser issued a

four-page report and recommendation recommending that the plaintiff's three motions for default and default judgment (Rec. Doc. Nos. 26, 29, and 34), be denied and that the case be remanded to Magistrate Judge Smyser for further proceedings. (Rec. Doc. No. 52.) Plaintiff filed objections to Magistrate Judge Smyser's report and recommendation on or about July 13, 2005. (Rec. Doc. No. 55.) Plaintiff also previously filed, on July 8, 2005, a motion to stay all future proceedings pending disposal of undecided motions. (Rec. Doc. No. 53.)

DISCUSSION:

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

Fisher objects to the magistrate judge's report and recommendation with very colorful language. He asserts that 42 U.S.C. § 1997e(g)(1), the statutory authority that allows waiver of the right to reply in "any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law," is vague and unfair to prisoner litigants.¹

¹Fisher notes that the law would make sense, if there was an exception for its application to a case like his, a case that involves a self-described honorably

Fisher states that “42 U.S.C. § 1997e(g)(1) applies to namely 42 U.S.C. § 1983 only!” (Rec. Doc. No.

55, at 2) (emphasis in original). This is plainly not the case, although the statute only references § 1983 by name, it applies to “any other Federal law” as well.

Fisher’s objections are without merit and overruled.

In his objections to the magistrate judge’s report and recommendation Fisher makes his “official request to remove the magistrate from the case.” (Rec. Doc. No. 55, at 3.) Fisher’s request that Magistrate Judge Smyser’s be removed from the case appears, curiously, to stem from Magistrate Judge Smyser’s applying the law of 42 U.S.C. § 1997, and the language contained within the statute. This argument puzzles the court. Of course, applying the law of the land to the case at hand is not grounds to dismiss the esteemed magistrate judge. In fact, it is exactly the court’s task.

In view of the other rulings made by the court in this order, Fisher’s motion to stay (Rec. Doc. No. 53) will be denied as moot.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

discharged World War II Veteran. (Rec. Doc. No. 55, at 4.)

1. The report and recommendation of United States Magistrate Judge J. Andrew Smyser (Rec. Doc. No. 52), is adopted in full for the reasons set forth therein, as well as for the reasons set forth in this order.
2. Fisher's motions for default and default judgment are denied. (Rec. Docs. No. 26, 29, and 34.)
3. Fisher's informal request to remove Magistrate Judge J. Andrew Smyser from the above captioned case is denied.
4. Fisher's motion to stay (Rec. Doc. No. 53) is denied as moot.
5. The case is remanded to Magistrate Judge J. Andrew Smyser for further proceedings.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge